

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

MISC. LAND APPEAL NO. 27 OF 2018

(From the District Land and Housing Tribunal for Mbeya in Land Appeal No. 12 of 2016. Originating from Land Case No. 63 of 2015 in Mahongole Ward Tribunal)

LEAH MWAMWEZI.....APPELLANT

VERSUS

JOHN MWANSASU.....RESPONDENT

RULING

Date of Last Order: 10/12/2019
Date of Ruling : 05/03/2020

MONGELLA, J.

This is a ruling on preliminary objection raised by the Respondent's Counsel Mr. Daniel Muya against the appeal filed in this Court by the Appellant. Mr. Muya raised a preliminary objection containing two points of law to wit:

- 1. The appeal is bad in law for being time barred brought contrary to section 38 (1) of the Land Disputes Courts Act, Cap 216 R.E. 2002.*

2. *The appeal is bad in law for being brought by way of memorandum contrary to section 38 (2) of the Land Disputes Courts Act, Cap 216 R. E. 2002.*

The preliminary objection was argued by written submissions. Arguing on the first point, Mr. Muya contended that the time limitation of filing appeals in the High Court from the District Land and Housing Tribunal (Tribunal) on matters originating from the ward tribunal is sixty days as provided under section 38 (1) of the Land Disputes Courts Act, Cap 216. He argued that the decision of the Tribunal was delivered on 25th May 2018, but the present appeal was filed on 28th August 2018 whereby it was delayed for ninety one days. He therefore contended that the Appellant's appeal is bound to be dismissed for being time barred. To support his argument he cited the case of ***District Executive Director, Kilwa District Council v. Bogeta Engineering Limited***, Civil Appeal No. 37 of 2017 and that of ***Fatuma Mohamed v. Chausiku Selema***, Civil Appeal No. 225 of 2017. He argued that in both cases the Court of Appeal ruled that an appellant who has been time barred to file an appeal needs to seek leave to file the appeal out of time and set reasons for being time barred whereby the court will assess the reasons and grant extension of time or refuse to grant.

In reply to this point, Mr. Sambwee Shitambala, learned Advocate for the Appellant argued that every general rule has got an exception. He contended that though section 38 (1) of the Land Disputes Courts Act provides for sixty days limitation period, the proviso to that section provides another room by permitting the High Court to extend time for

filing an appeal either before or after the expiry of sixty days where there is good and sufficient cause. He cited the case of **Tanga Cement Co. Ltd v. Christopherson Co. Ltd.**, Civil Appeal No. 133 of 2006 to support his argument.

Mr. Shitambala went ahead and argued that it took time for the Appellant to obtain the copies of judgment and decree which are necessary documents to accompany the appeal as per Order XXXIX Rule 1 (1) of the Civil Procedure Code, Cap 33 R.E. 2002. He said that certified copies of the ruling and ex parte judgment were obtained on 26th June 2018 and copies of proceedings were obtained on 24th August 2018 thereby causing the Appellant to delay in filing his appeal. In addition he cited section 19 (2) of the Law of Limitation Act, Cap 89 R.E. 2002 which states that:

"In computing the period of limitation prescribed for an appeal, an application for leave to appeal or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of decree or order appealed from or sought to be reviewed, shall be excluded."

Basing on the above provision, he argued that the computation of time started to count from the date the Appellant obtained the copies of ruling, ex parte judgment and proceedings. He said the appeal was instituted on 24th August 2018 which was within the time limitation provided under section 38 (1) of the Land Disputes Courts Act.


I have considered the arguments by both counsels and I observe as follows:

Mr. Shitambala argued that the delay was caused by the delay in issuing copies of judgment and decree and thus time should start to run after the date of obtaining such copies. As much as I agree with him that waiting for copies of judgment and decree amounts to sufficient reasons for delay and as per **section 19(2) of the Law of Limitation Act** the said time should be excluded, I do not agree with the course taken by him and the Appellant in lodging the appeal. It has been decided by the Court of Appeal and this Court on several occasions that the exclusion of time for waiting for copies of judgment and proceedings is not automatic. A party must first lodge an application for extension of time to file the appeal and waiting for copies of judgment and proceedings shall be taken as sufficient reason to warrant the Court to grant the extension of time to file the appeal out of time. See: **Kisioki Emmanuel v. Zakaria Emmanuel**, Civil Appeal No. 140 of 2016 (CAT, unreported). See also: **Michael Eliawony Makundi v. Geoffrey Eliawony Makundi**, Probate Appeal No. 04 of 2019 (HC-Mbeya, unreported). Failure to adhere to this procedure is a fatal irregularity and makes the appeal incompetent before the Court.


In the upshot, I find the Appellant's appeal hopelessly time barred for being filed after the elapse of 91 days without leave of the Court. I sustain the first point of the Respondent's preliminary objection and dismissed the Appellant's appeal with costs. I find this first point of preliminary objection sufficient to dispose the matter and thus shall not deliberate on the remaining point of preliminary objection.

Dated at Mbeya on this 05th day of March 2020.




L. M. MONGELLA
JUDGE
05/03/2020

Court: Ruling delivered in Mbeya in Chambers on this 05th day of March 2020 in the presence of Mr. Shitambala, for the Appellant, the Appellant and Mr. Kiranga, holding brief for Advocate Muya for the Respondent.


L. M. MONGELLA
JUDGE
05/03/2020